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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division

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U.S. BANKRUPTCY COURT
N.D. OF ALABAMA

In re:

SHOOK & FLETCHER INSULATION CO.

Debtor-in-Possession.

Case No. 02-02771-BGC-11
Chapter 11

**MOTION FOR AN ORDER EXTENDING THE DEBTOR'S EXCLUSIVE
PERIOD TO SOLICIT ACCEPTANCES OF A PLAN OF REORGANIZATION**

Shook & Fletcher Insulation Co., debtor and debtor-in-possession (the "Debtor" or "Shook"), by counsel, files this Motion (the "Motion") seeking an order extending its exclusive period to solicit acceptances of a plan of reorganization until thirty days after the Court rules on confirmation, following the hearing scheduled for October 29, 2002, of the Debtor's Amended Plan of Reorganization (Docket No. 263) (the "Plan").¹

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is 11 U.S.C. § 1121(d) of the United States Bankruptcy Code (the "Bankruptcy Code").

RELIEF REQUESTED

3. Section 1121 of the Bankruptcy Code provides for defined periods of time during which only a debtor may file a plan of reorganization and may pursue confirmation of that plan.

¹ All capitalized terms used but not defined in this Motion shall have the meanings ascribed to them in the Amended Glossary attached to the Plan as Exhibit A.

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Section 1121(b) provides that only the debtor may file a plan within the first 120 days of the case. Shook has satisfied that requirement; indeed, the Plan was filed on the first day of this case. Section 1121(c) permits a debtor to maintain exclusivity if, but only if, (1) no trustee is appointed, (2) a plan is filed within the first 120 days of the case, and (3) the plan has been accepted by each impaired class of claims and interests within the first 180 days of the case. Criteria (1) and (2) clearly are satisfied here – no trustee has been appointed and the Plan was timely filed. While the Debtor believes that the third criterion also is satisfied – that is, the Plan has been accepted by each impaired class within 180 days of filing the case – others may assert that acceptance is not determined until the final opportunity to cast ballots has occurred and/or until the conclusion of the confirmation hearing.

4. This case was filed on April 8, 2002; the 180-day period runs on October 5, 2002. Since the Court (at the Debtor's request, out of an abundance of caution) has extended the deadline to cast ballots for certain creditors until October 15, 2002, and the hearing on confirmation is not set until October 29, 2002, the Debtor requests an enlargement of the 180-day period under § 1121(c)(3) to and until 30 days after the Court rules upon confirmation of the Plan.

BACKGROUND OF THE CASE

5. The Debtor is a small, family owned business centered in Birmingham, Alabama. Since its inception in 1949, the Debtor has been a specialty thermal insulation union contractor and distributor serving primarily heavy industry. The Debtor has received a large number of claims from individuals alleging injuries resulting from exposure to asbestos and asbestos-containing products.

6. In February 2002, the Debtor circulated to its creditors its proposed Plan. As a result of the Debtor's pre-petition solicitation, in excess of 44,000 Asbestos Claimants, individually or by counsel, voted on the Plan. Of those creditors who voted on the Plan, only one voted to reject the Plan.²

7. On April 8, 2002 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. Contemporaneously with the filing of its petition, the Debtor filed its Disclosure Statement dated February 18, 2002 (the "Disclosure Statement") and its Plan.

8. Following the Petition Date, this case was marked by extensive discovery and litigation between the Debtor and one of its principal insurers, Travelers Casualty & Surety Company ("Travelers"), which had raised objections to the Disclosure Statement, the Plan and the Debtor's pre-petition solicitation procedures. In August 2002, the Debtor and Travelers entered into a settlement agreement, subject to Court approval, which resolves all disputes between them and provides for the payment by Travelers of \$142 million in connection with Asbestos Claims.

9. In addition to the Travelers settlement, the Debtor has also entered into settlement agreements, subject to Court approval, with Certain Underwriters at Lloyd's London, St. Paul Fire & Marine Insurance Company and Ranger Insurance Company, which collectively provide for payments totaling in the aggregate in excess of \$26 million in connection with Asbestos Claims. Separate motions seeking approval of the Travelers Settlement Agreement and each of

² The Debtor's voting agent received one ballot rejecting the Plan. Because the individual claimant casting that ballot voted with respect to three separate, and mutually exclusive, classes of claims, the Debtor believes that ballot should not be counted.

the other settlement agreements are now pending before the Court, and are set for hearing on October 17, 2002.³

10. The hearing on confirmation of the Plan originally was set for August 7, 2002. In mid-July, and on several occasions since that time, at the Debtor's request, the Court has extended the deadline to file objections to the Disclosure Statement and Plan, and continued the hearings on the Disclosure Statement and confirmation of the Plan, in order to permit the Debtor and its insurers the opportunity to finalize and document their respective settlement agreements, without incurring the expense of further litigation. Most recently, on August 30, 2002, at the request of the Debtor and without any objection, the Court entered its Order continuing the hearing on confirmation of the Plan until October 29, 2002.

11. As part of the settlement agreement between the Debtor and Travelers, the Debtor agreed to certain modifications to the Plan and to the accompanying Glossary. As a result, on August 30, 2002, the Debtor filed with the Court its Amended Plan with an Amended Glossary. The Debtor also filed its Motion Pursuant to Bankruptcy Rule 3019 for a Determination that Proposed Modifications to the Plan do not Adversely Change the Treatment of Any Claim or Interest (the "Rule 3019 Motion").

12. Also on August 30, 2002, the Debtor filed its Motion to Approve Supplemental Notice Procedures (the "Notice Motion"), seeking to establish additional notice procedures to resolve any possible questions as to the adequacy of the notice provided by the Debtor in this bankruptcy case and in connection with the Debtor's solicitation of acceptances of the Plan, and to advise parties-in-interest of events which had occurred since February 2002, when the pre-petition solicitation documents were first distributed.

³ The Debtor also anticipates entering into a settlement agreement with Continental Casualty Company ("CCC") and will be asking the Court by separate motion to set a hearing on the CCC settlement for October 17, 2002, and to shorten the time for notice. The other settlements are already scheduled to be considered on that date.

13. On September 10, 2002, the Court held a hearing on the Disclosure Statement, the Rule 3019 Motion and the Notice Motion. Following the hearing, the Court entered orders approving the Disclosure Statement, approving the proposed Supplemental Notice Procedures, and determining that the proposed modifications to the Plan did not adversely change the treatment of any claim or interest. Pursuant to the Order Approving Supplemental Notice Procedures, the Court provided certain creditors with the opportunity to cast a ballot to accept or reject the Plan (or to change a vote previously cast), to and until 4:00 p.m., Central Time, on October 15, 2002.

APPLICABLE AUTHORITY

Section 1121 of the Bankruptcy Code states, in pertinent part:

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

(c) Any party-in-interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if –

(1) a trustee has been appointed under this chapter;

(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

(d) On request of a party-in-interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

THE DEBTOR'S EXCLUSIVE PERIOD SHOULD BE EXTENDED

I. Section 1121 of the Bankruptcy Code Precludes Any Party In Interest Other Than the Debtor From Filing a Plan, As Long As the Criteria of § 1121(c) Are Met.

Section 1121 of the Bankruptcy Code gives a debtor the exclusive right to file a reorganization plan within 120 days after the order for relief. 11 U.S.C. § 1121(b). Assuming no trustee is appointed, a debtor then has 180 days from the order of relief to have its plan accepted by each impaired class of creditors and equity holders. 11 U.S.C. § 1121(c). The Debtor has satisfied the criteria of Section 1121(c) here: No trustee has been appointed; the Debtor filed its Plan before 120 days after the Petition Date; and the Plan has been accepted by each class of claims or interests impaired under the Plan. Accordingly, the Debtor may argue that it is, and after October 5, 2002 will remain, the sole party permitted to file a plan in this case.

Certain creditors, however, have the opportunity to cast a ballot to accept or reject the Plan (or to change a previously cast ballot) until October 15, 2002, and the confirmation hearing is set for October 29, 2002. Accordingly, the Debtor is concerned that a party might contend that the Plan has not yet been fully accepted by each class of claims or interests under the Plan, or alternatively may contend that acceptance is not finally determined until the confirmation hearing. Because the 180-day period for the Debtor to obtain acceptance of its proposed plan without any other party filing a competing plan of reorganization now concludes on October 5, 2002, the Debtor requests that the Court enter its Order extending the exclusive period under § 1121(c)(3) to and until thirty days after the Court rules upon confirmation of the Plan.

II. Cause Exists to Extend the Exclusivity Period.

Section 1121(d) of the Code empowers the Court, upon request by a party-in-interest, and after notice and hearing, to extend the exclusivity period upon a showing of "cause" by the moving party. In practice, requests for extensions of the exclusivity period are commonly granted, particularly in complex cases. See, e.g., In re Gibson & Cushman Dredging Corp., 101

B.R. 405 (E.D.N.Y. 1989); In re Perkins, 71 B.R. 294 (W.D. Tenn. 1987); In re Manville Forest Prods. Corp., 31 B.R. 991 (S.D.N.Y. 1983); In re Public Serv. Co. of New Hampshire, 88 B.R. 521 (Bankr. D.N.H. 1988); In re Texaco Inc., 76 B.R. 322 (Bankr. S.D.N.Y. 1987); In re U.N.R. Indus., 72 B.R. 789 (Bankr. N.D. Ill. 1987); In re Pine Run Trust, 67 B.R. 432 (Bankr. E.D. Pa. 1986); In re United Press Int'l Inc., 60 B.R. 265 (Bankr. D. Colo. 1986); In re Sawara Coal Co., 49 B.R. 898 (Bankr. E.D. Pa. 1985).

The term "cause" is not defined in the Code. The legislative history of section 1121(d) indicates, however, that the determination of whether sufficient "cause" exists to grant an extension is committed to the sound discretion of the bankruptcy court based upon an evaluation of the facts and circumstances of each case. H.R. Rep. No. 595, 95th Cong., 1st Sess. 232 (1977).

A key factor considered by courts is the probability that the debtor will be able, given additional time, to propose a plan that will result in a successful reorganization. See, e.g., In re Perkins, 71 B.R. 294 (W.D. Tenn. 1987) (granting extension because of reasonable probability that debtor would be rehabilitated through the plan); In re Nicolet, Inc., 80 B.R. 733 (E.D. Pa. 1987); In re Texaco Inc., 76 B.R. 322 (Bankr. S.D.N.Y. 1987) (allowing debtor opportunity to negotiate an acceptable plan justified extension); In re Pine Run Trust, Inc., 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986) (granting requested extension of 90 days to allow plan negotiations to continue and for the debtors to submit disclosure statement); In re Swatara Coal Co., 49 B.R. 898 (Bankr. E.D. Pa. 1985) (establishing "cause" for extension by reference to the debtor's showing of progress in plan negotiations and probability of a successful reorganization). An additional factor considered by the courts in determining whether to extend a debtor's exclusivity period is the possible harm or prejudice to creditors. See In re Matter of Interco Inc., 137 B.R. 999, 1001 (Bankr. E.D. Mo. 1992); In re McLean Indus., Inc., 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); In

re Texaco Inc., 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

The factors upon which extensions of the exclusivity period have been granted are present in this case and support the extension requested by the Debtor. The Debtor has worked tirelessly to resolve objections to its Plan and ensure that all parties-in-interest receive notice, and that creditors have an yet another opportunity to cast a ballot to accept or reject the Plan, in addition to the opportunity provided during the pre-petition solicitation period. The ballots cast during the Debtor's initial solicitation indicate virtually unanimous support for the Plan. As a result of the post-petition settlements negotiated by the Debtor with its insurers, when added to the Debtor's pre-petition settlement with Hartford Financial Services Group, Inc., the Debtor expects that the Trusts will receive at least \$277 million over the next six years. At the present time, only one insurer continues to maintain an objection to confirmation of the Plan. Therefore, it is likely that, given the brief additional time sought, the Debtor's Plan will be confirmed by the Court and will result in a successful reorganization, for the benefit of all creditors.

Furthermore, any failure to confirm the Debtor's Plan within 180 days from the Petition Date will not be the result of any purposeful delay by the Debtor. As set forth above, substantial litigation erupted between the Debtor and Travelers, and the Debtor was required to expend substantial resources litigating those matters. Immediately upon resolving the dispute with Travelers, the Debtor sought from the Court, as soon as practicable under the circumstances, a hearing on confirmation of the Plan.

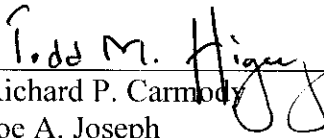
Moreover, the extension of the Debtor's exclusive period will not harm or prejudice creditors of the estate. Based upon the ballots submitted to date, the Plan has been accepted almost unanimously by all classes of claims and interests that are entitled to vote on the Plan; the Debtor does not anticipate a material change in the outcome of that vote. The date of the confirmation hearing on the Debtor's Plan was extended, without objection, to ensure that

creditors and equity holders received supplemental notice and an additional opportunity to cast a ballot to accept or reject the Plan under certain circumstances.

Failure to extend the Debtor's exclusive period until after the Court rules upon the pending Plan will likely prejudice the Debtor and its creditors. If another party-in-interest should submit an alternative plan of reorganization at the eleventh hour, the Debtor and other parties will be required to expend significant time and expense defending the Plan to the detriment of the estate. Furthermore, any proponent of an alternative plan is likely to request that the Court delay confirmation of the Debtor's Plan. In light of the procedural posture of the case, the overwhelming support of creditors and the Debtor's progress in resolving the objections of its insurers, cause exists to extend the Debtor's exclusive period under § 1121(c)(3) until thirty days following the Court's ruling upon confirmation of the Plan.

WHEREFORE, for these reasons, the Debtor respectfully requests that this Court enter an order extending its exclusive period to solicit acceptances of its Plan, under § 1121(c)(3) of the Bankruptcy Code, to and until 30 days after the Court rules upon confirmation of the Debtor's Plan, and further that the Court grant such other and further relief as is just and proper.

Respectfully submitted,



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Dated: October 3, 2002

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Southern Division**

In re:

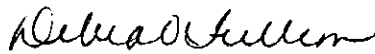
SHOOK & FLETCHER INSULATION CO.

Debtor-in-Possession.

**Case No. 02-02771-BGC-11
Chapter 11**

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2002, I caused a copy of the foregoing Motion for an Order Extending the Debtor's Exclusive Period to Solicit Acceptances of a Plan of Reorganization to be served upon the parties on the attached Service List via U.S. Mail, postage prepaid.



Debra O. Fullem

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